



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 563

IN THE MATTER OF MARK REED

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Mark Reed ("Reed") pursuant to Section 5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 8, 1996, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Reed. The Commission has concluded its inquiry and, on June 11, 1997, found reasonable cause to believe that Reed violated G.L. c. 268A.

The Commission and Reed now agree to the following findings of fact and conclusions of law:

1. Reed was, during the time relevant, a member of the Southampton Conservation Commission ("Conservation Commission"). As such, Reed was a municipal employee as that term is defined in G.L. c. 268A, '1.

2. At all times relevant hereto, Reed was a surveyor employed by Heritage Surveys, Inc. ("Heritage") as a salaried full-time employee.

3. Reed appeared as a surveyor before the Conservation Commission on behalf of the following Heritage clients on the following occasions:

a. On April 11, June 13, June 27 and June 29, 1994, on behalf of Jeffrey Swanson ("Swanson") in relation to a new house to be built on Glendale Road in connection with a notice of intent dated June 5, 1994, and an order of conditions dated July 11, 1994 for the aforementioned house.^{1/}

b. On August 15 and November 14, 1994, on behalf of Henry Hochman ("Hochman") in relation to a barn to be built at 14 Russellville Road in connection with a request for a determination of applicability^{2/} dated August 9, 1994, and a negative determination granted by the Conservation Commission on August 18, 1994, in connection with the aforementioned barn.

c. On June 13, June 27, June 29, July 25 and August 15, 1994 on behalf of Paul Lussier ("Lussier") in relation to a proposed subdivision known as Pomeroy Meadows in connection with a notice of intent dated June 7, 1994.

d. On July 31, 1995 on behalf of Mark W. and Carolyn A. Blackmer ("the Blackmers") in relation to the proposed construction of a single family home on Brickyard Road Extension in connection with a notice of intent dated July 20, 1995 and an order of conditions dated August

14, 1995, for the aforementioned house.

4. Reed received compensation from Heritage for appearing on behalf of Swanson, Hochman, Lussier and the Blackmers before the Conservation Commission. The compensation paid to Reed by Heritage was his normal salary. Reed did not receive additional compensation from Heritage for his appearances before the Conservation Commission.

5. General Laws, c. 268A, §17(c) prohibits a municipal employee, otherwise than in the proper discharge of his official duties, from acting as agent for a private party in connection with any particular matter in which his town has a direct and substantial interest.

6. The decisions to grant determinations of applicability and orders of conditions were particular matters. The town had an obvious direct and substantial interest in those particular matters.

7. By acting as agent for Swanson, Hochman, Lussier and the Blackmers before the Conservation Commission concerning their notices of intent, determinations of applicability and/or orders of conditions as set out in the foregoing paragraphs, Reed violated G.L. c. 268A, §17(c).

8. Reed did not participate as a Conservation Commission member in any of the above matters concerning Swanson, Hochman, Lussier or the Blackmers.

9. When Reed was appointed to the Conservation Commission, he discussed his employment with Heritage with the Selectmen and the other Conservation Commission members. As a result of these discussions, Reed incorrectly believed that it was permissible to represent Heritage and its clients before the Conservation Commission. His understanding was that, as a Conservation Commission member, he would abstain from voting, discussing or acting on any matter in which Heritage had any involvement. His understanding was incorrect.^{3/}

10. Reed cooperated fully with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Reed, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Reed:

(1) that he, in the future, refrain from acting as agent for private parties in connection with particular matters in which the Town of Southampton has a direct and substantial interest, prohibited by G.L. c. 268A, §17(c);

(2) that he pay to the Commission the sum of one thousand five hundred dollars (\$1,500) as a civil penalty for the violations of G.L. c. 268A, §17(c); and

(3) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 16, 1997

^{1/}A notice of intent informs a Conservation Commission of a developer's plan to do work in a wetlands or in the 100 foot wetlands buffer. In turn, the Conservation Commission regulates how and where the work is done by issuing an "order of conditions."

^{2/}A determination of applicability indicates whether the proposed project is within the jurisdiction of the Conservation Commission.

^{3/}Reed's reliance on incorrect advice is not a defense. While such reliance can be a mitigating factor, little weight is given when the advice is oral and not from town counsel. The only advice which can be relied on as a defense is written advice from the State Ethics Commission, or the Commission's written concurrence with town counsel advice. *See* 930 CMR 1.03. Reed neither contacted town counsel nor the State Ethics Commission concerning representing clients before the Conservation Commission.